

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ULRIKE M. WEST,

Plaintiff,

v.

No.: 6:09-cv-00631-MV/CEG

NEW MEXICO TAXATION AND REVENUE
DEPARTMENT and PHILLIP SALAZAR,

Defendants.

MOTION FOR SUMMARY JUDGMENT

Defendants New Mexico Taxation and Revenue Department and Phillip Salazar (hereinafter "State Defendants") move this Court for its order entering summary judgment on behalf of the Defendants under Rule 56 of the Federal Rules of Civil Procedure and dismissing the Complaint with prejudice. The grounds for this motion are:

1. Plaintiff's requests for accommodation were granted. Thus, she suffered no tangible adverse employment action and cannot establish an element of a retaliation claim.
2. Plaintiff cannot show a causal connection between her filing a charge of discrimination and TRD's response to her two requests for accommodation.
3. Plaintiff cannot show that her speech was not made pursuant to her official duties or that it involved a matter of public concern, therefore, her claim for violation of her First Amendment rights should be dismissed.

4. Defendant Salazar is entitled to qualified immunity from suit under 42 U.S.C. §1983 because he did not violate West's established rights.

5. Plaintiff's claim of negligent supervision (Count IV) is barred by the New Mexico Tort Claims Act because there is no waiver of sovereign immunity for this tort.

6. Plaintiff's claims for breach of an implied contract, breach of the covenant of good faith and fair dealing and promissory estoppel fail because Plaintiff did not identify any written rule or regulation forming an implied contract with her, or any representation she relied upon to her detriment. To the extent that Plaintiff relies upon State Personnel Board rules, she failed to pursue the procedure available to her to enforce the State Personnel Rules and Regulations. Therefore, Defendants are entitled to dismissal of Counts V, VI and VII of the Complaint.

For these reasons, and as more fully set forth in Defendants' Memorandum in Support of Motion for Summary Judgment filed simultaneously with this motion, Defendants move this Court for its order granting summary judgment and dismissing the complaint. Defendants also seek their costs of suit and such further relief as the Court deems appropriate.

Respectfully submitted,

MILLER STRATVERT P.A.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed electronically through the CM/ECF system and was also mailed to the following parties or counsel of record this 26th day of March, 2010, via United States first class mail, postage prepaid:

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/s/ Paula G. Maynes
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